1950

File No. Constitution II/1950

Legal Department

B BRANCH

K

Subject:— Notifications under the Constitution of India

E-101
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File No. Constitution II/1950 (N)

57-B

Gen. 194

Office of the R.L.A.

The orders made by the Governor under section 175(3) of the Government of India Act 1935 are statutory orders. In virtue of the provisions of clause (1) of Article 372 and the provisions of Article 367 under which the General Clauses Act 1897, would apply for the interpretation of the Constitution the orders made under section 175(3) would be saved, until fresh orders are issued under Article 299. However, as a matter of abundant caution, it would be safer to re-issue the order, as this is particularly a topic which will frequently recur in litigation by or against Government.

Sd/- P.N.Lal,
7/1.

Remembranc r of Legal Affairs.

U.R. to N.D. No.296, dated the 9th January 1950.

4-Gs.

N.V.V.
21/6.

Office of the S.L.A.

The Constitution of India does not require the promotion of any legislation to define anew the jurisdiction and powers of High Courts.

Sd/- P.M.Lad,
9/1.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 349, dated the 9th January 1950.

4-Cs.

M.V.V.
22/6.

Legal Department.

The Government of India Acts which were the Constitution Act prior to 26th January 1950 did not contain any provision in regard to the language of the Centre or of the Provinces. Under the old Constitution, certain enactments such as sec. 558 of the Criminal Procedure Code and Sec. 137 of the Code of Civil Procedure empowered Government to prescribe language for Criminal or Civil Courts. Accordingly, notifications have been issued by Government. For the reconstituted districts after the merger such notifications xxx were issued on 8th Feb uary 1950. For other Govern - ment Offices, executive orders were issued by Government. Article 345 of the present Constitu - tion empowers a State Legislature to adopt by law any one or more languages as the official language or languages of the State. The proviso to the article provides that until such law is made the English shall be continued as the official language for those official purposes for which it was being used befo e 26th January 1950. There is, however, no obligation on a State Legislature to make a law under the article Until, therefore, any law is made by the State Legislature under Article 345, such enactments as sec. 550 of the Criminal Procedure Code and Section 137 of the Code of Civil Procedure or any other relevant executive orders regarding official languages would continue to be in force and can be amended or made as the occassion requires. Article 34' is not a bar. The orders of 8th February 1950 can, therefore, be altered until a law is made by the State Legilsature under article 345."

Sd/- J.R.Dhurandhar,
20/4.

4-Ca/M.V.V./21.6 M Chief Secretary.

Legal Department.

The view taken in P.& S.D. note is ~~max~~ correct. The general question regarding the cases to be submitted to H.E. the Governer before decision was considered by the R.L.A. in U.R. No. 11566 dated 3rd December 1947 with reference to the provisions of the Government of India Act, 1935. The present Constitution has not made any change in the position already stated. On the other hand the Government of India Act, 1935 contained a provision in section 241(5) which enabled the Governer to deal with the case of a Government servant & in a just and equitable manner, notwithstanding any rules or the Act of the Legislature. This provision does not exist in the present Constitution. In view of Instruction No.40 of the Instructions issued under the Rules of Business, it does not appear necessary to submit a memorial of a Government Servant to H.E. the Governor before decision. Attention is invited to U.R. No. 12217 dated 23rd December 1948 and No. 3811 dated 17th March 1950.

Sd/- J.R. Dhurandhar,
Additional Secretary to Government.

U.R. to P. & S.D. No. 6949, dated the 22nd May 1950.

4-C .

M.V.V.
21.6.

Office of the R.L.A.

Sub-clauses (a) to (e) of clause (3) of article 202 of the Constitution specify the expenditure which shall be charged on the Consolidated Fund of the State. Under sub-clause (f) of clause (3) of the said article 202 any other expenditure declared by the Constitution (e.g. articles 229(3) 290, 291(2) and 32?), or by the Legislature of the State to be so charged will also be charged on the Consolidated Fund of the State. The expenditure for the salaries and allowances of Ministers and of the Advocate General is not specified in article 202 and is not declared by any other provision of the Constitution or by the Legislature of the State by law to be charged on the Consolidated Fund of the State. The provisions of articles 390 and 390A(2) are not available after 31st March 1950. ~~Now~~ From 1st April 1950, therefore, the expenditure in question will not be charged on the Consolidated Fund of the State.

Sd/- P.M.Lad,
19/8.

Remembrancer of Legal Affairs.

U.R. to F.D. No.11863, dated the 21st August 1950.

4-Co.

M.V.V.
21/6.

Legal Department.

In place of the draft at page 63 ante, a revised draft Government Resolution is sent herewith.

Para. 2 of Accountant General's note dated 18.4.1950 at page 61.- It is not necessary to mention the Bombay Charged Expenditure Act, 1939, as a separate item in the proposed Government Resolution Entry 10 in the revised Government Resolution will cover it. Moreover, the charging provisions contained in that Act will not be available after 1.4.1950.

Para 3.- The item regarding privy purse sums of Rulers of Indian States should be retained as under article 291(2) contributions in respect of such payments are mxk charged on the Consolidated Fund of kk the State. But a note may be added in the light of the Accountant General's remarks on item 8 at page 62 ante.

Sd/- R J.R.Dhurandhar,
11/5.

Additional Secretary to Government.

U.R. TO F.D. No. 6553, dated the 13th May 1950.

4-Cs.

H.V.V.
21/6.

Office of the R.L.A.

Article 320(3)(c) of the Constitution requires that the Public Service Commission shall be consulted on all disciplinary matters affecting a person serving under the Government of a State in a civil capacity. The Chief Secretary is right in his view that the reversion of an officer on the ground of unsuitability or inefficiency cannot be said to be a disciplinary matter. However, sub-clause (b) of clause (3) of clause 320 also requires that the Commission shall be consulted on the prinéciples to be followed in making appointments to civil services and posts and on the suitability of candidates for such appointments. The Commission is within its rights in asking for an amendment of regulation 14(b) on the ground that this is a matter which is referable to the topic covered by sub-clause(b) quoted above. Whether such an amendment should be made is a matter entirely one of policy. In that connection it may be pointed out that it appears from the information supplied by the P.& S.D. that this question was considered and a deliberate decision taken to exclude it from the purview of the Public Service Commission while framing regulation 14(b) in its present form. Any such regulation would be saved by the proviso to clause (3) of article 320.

Sd/- P.M.Lad,
25/9.

Remembrancer of Legal Affairs.

U.R. to P. & S. D. No. 13571, dated the 25th Sept. 1950.

4-Cs.

M.V.V.
22/6.

Office of the R.L.A.

The question involved in the case has been canvassed by the Madras Government in an appeal filed by them in the Supreme Court against the decision of the Madras High Court in what is known as the Communal G.O. case. Before Government takes any final decision in the matter it would be desirable to know the judgment of the Supreme Court. As the decision of the Madras High Court is not binding on us, Government may in the mean-time continue the scholarships in educational institutions reserved for particular communities.

Sd/- P.M.Lad,
21/9.

Remembrancer of Legal Affairs.

U.R. to E.D. No. 13475, dated the 22nd September 1950.

4-Cs.

M.V.V./22.6

Legal Department.

There is no objection to prescribing forms for ~~minimum~~ dismissal or removal from service as suggested by the Deputy Secretary, Political and Services Department in his note at page 6 ante. The necessary draft forms which are prepared on the lines of the forms sent by the Government of India are sent herewith.

Sd/- J.R.Dhurandhar,
8/11.

Additional Secretary to Government.

U.R. to P. & S.D. NO. 15723, dated the 11th November 1950.

4-Cs.

M.V.V.
22/6.

O R D E R.

No.
_____Department,

Bombay Castle(Bombay No.1), 1950.

The Governor of Bombay is hereby pleased to

dismiss* Shri _____
remove*

the _____service*
from _____ with effect
Service *

from _____@_____.

By order of the Governor of Bombay,

(Signature) _____

(Designation) Secretary
Deputy Secretary
Under Secretary to Government.
Asstt. Secretary.

Strike out whichever is inappropirate.

Here enter the date on which orders of dismissal removal are passed by the competent authority.

4-Cs.

M.V.V./22.6

ORDER.

No.
_____ Department,

Office of the _____

(Date) _____ 1950.

I, the undersigned, do hereby dismiss * remove *

Shri _____

the _____ service*
from ~~the~~ _____ with

effect from _____@_____.

(Signature) _____.

(Name) _____.

Designation of officer

competent to dismiss* _____.
remove*

from service.

---

* Strike out whichever is inappropriate.

@ Here enter the date on which orders of Dismissal removal.

are passed by the competent authority.

4-Cs.

M.V.V.
22/6.

Legal Department.

In order that the Mines and Minerals(Regulation and Development) Act, 1948, should be applied to the Scheduled Areas it will be necessary as pointed out in L.D.No.5185, dated 17th April 1950 to have recourse to sub-para(2) of paragraph 5 of Part B of the 5th Schedule to the Constitution of India and make a regulation for applying that Act to these Areas. The question then remains of the areas which were Partially Excluded Areas before the commencement of the Constitution but are not included in the Scheduled Areas under the Scheduled Areas (Part A States) Order of 1950. These Areas are :-

(1) Talukas of Shahada, Nandurbar and Taloda in the West Khandesh District; and

(2) the Dohad taluka and Jhalod Mahal of the Panch Mahals District.

It appears that the intention is to integrate these areas completely with the State of Bombay and bring them on par with the State so far as the application of laws is concerned. If so, it will be necessary that Acts such as Mines and Minerals (Regualtion and Development) Act, 1948 which were not applied to those areas should now be applied to them. Unless power has been taken in the Acts themselves to apply them to particular areas the course now open to apply such Acts, to these areas would be by means of legislation. So far as laws which fall in the Union List are concerned e.g. the Mines and Minerals (Regulation and Development) Act, 1948, it would be for the Central Government to apply such laws to those areas. As regards other laws i.e. laws falling in the State List and Concurrent Ligislative List are concerned action will have to be taken by the State Government and the State Government will have to pass necessary legislation applying those laws to those areas.

2. As there may be certain laws which may not at all have been applied to the areas mentioned above it may

P.T.O.

also be that there are certain laws which may have been applied to those ar as under section 92 of the Government of India Act with certain exceptions and modifications. As these areas are now completely integrated with the State of Bombay there should be no difference in laws applicable to those areas and the other areas x in the State of Bombay. It would therefore be necessary to exmine the laws at present applicable to these areas and promote necessary legislation to bring them on par with the State of Bombay.

Sd/- J.R.Dhurandhar,
26/6.

Additional Secretary to Government.

U.R. to D.D. No. 8817, dated the 27th June 1950.

4 Cs.

M.V.V.
22/6.

Office of the R. L. A.

Article 28 of the Constitution of India is relevant on that point. Clause (1) of that article provides that no religious instruction shall be provided in any educational institution wholly maintained out of x State funds. Madressa in question is not maintained out of State funds but it is maintained out of the Madressa endowment. Under clause (2) of article 28, religious instruction is permissible in an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution. Clause (2) of article 28, therefore, is applicable to the Dabhel-Simlak Madressa and the Dabhel Simlak Madressa Act, 1941 is not ultra vires of the ~~Bombay~~ Constitution.

Sd/- P.M. Lad,
1/11.

Remembrancer of Legal Affairs.

U.R. to E.D.No. 15277 dated the 2nd November 1950.

4-Cr.

M.V.V.
22/6.

Legal Department.

Seen and returned.

The draft letter at page 339 ante as slightly amended in pencil is in order.

It is not necessary to send to the Government of India a skeleton draft Order under article 263 of the Constitution. The provisions which the State Governments concerned would like to be incorporated in the proposed Order have been indicated in the draft letter and the form of the draft Order will accordingly be settled by the Government of India.

Sd/- J.R.Dhurandhar,
13/12.

Additional Secretary to Government.

U.R. to P. & S. D. No. 902-Confl. dated the 13th Dec. 1950.

4-Cs.

M.V.V.
22/6.

XX.

Office of the R.L.A.

As it was realised that it would not be possible to absorb in the Bombay Government Service all servants of the merged and integrated States, Government issued orders regarding their discharge in Government Resolution No. 2735/46 dated 18th July 1949. Under rule I(A) (1) it was directed that the following employees would be discharged, namely, persons who were either inefficient, unfit or dishonest, provided ther was sufficient material to establish their inefficiency, unfitness, or dishonesty. The intention in passing these orders appears to be not to take over such "State servants" into the Bombay Government Service as were found unsuitable. It is true that after merger some State servants continued to hold offices; but that fact alone would not make them servants of the State of Bombay until definite orders were passed for their absorption in the Bombay Government service. The mere fact that such state servants were not discharged on the date of the merger of the State would not imply that they were absorbed in the Bombay Government service. Therefore, the State servants who continued in service after merger and who were not discharged till after 26th November 1949 cannot be considered as holding a Civil post under the State of Bombay. They will not therefore be entitled to the benefit of clause (2) of the Article 311 of the Constitution of India.

2. The position stated above will hold good also in the case of Dr.Patel. It appears from these papers that although Dr. Patel was first recommended by the Public Service Commission for absorption in Bombay Medical Service, Class II, no orders for his absorption in Bombay Government Service were passed by Government. On the contrary when his past record was shown to the Commission,

the Commission came to the conclusion that he should be discharged from service under Rule I(A)(1) of the rules contained in the Government Resolution of 19th July 1949.

3. A person who is a member of Civil Service of the Union or an all-India Services or a Civil servant of the State or holds a civil post under the Union or a State is entitled to the benefit of Clause (2) of Article 311 when as a measure of disciplinary action taken against him he is dismissed or removed or reduced in rank. If the services of any such person are dispensed with on the ground of retrenchment he will not be entitled to the benefit of Clause (2) of Article 311.

Sd/- P.M.Lad,
24/11.

Remembrancer of Legal Affairs.

U.R. to L.C.C. & P.H.D. No. 16624, dated the 25th November 1950.

4-Ca.

M.V.V.
22/6.